

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SAMUEL HOUSTON,

Plaintiff,

v.

ARMY FLEET SERVICES, LLC.,

Defendants.

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**Civil Action No.
CV 06-243-MEF**

MOTION TO STRIKE AFFIDAVIT OF BRIGITTE HOUSTON

Army Fleet Support, LLC (“AFS”), files this motion to strike in its entirety the Affidavit of Brigitte Houston submitted by Plaintiff Samuel P. Houston in opposition to Defendant’s Motion for Summary Judgment. In support thereof, AFS states as follows:

Rule 56(e) of the Federal Rules of Civil Procedure requires that opposing affidavits “set forth facts as would be admissible in evidence.” Mrs. Houston’s affidavit, however, contains numerous incidents of inadmissible hearsay. For instance, Paragraph 3 of the affidavit recounts an alleged conversation overheard by Mrs. Houston between Plaintiff and some unidentified person(s). Mrs. Houston’s testimony regarding what she overheard is hearsay and therefore cannot be considered on summary judgment. See Fed. R. Evid. 801 & 802. See also Club Car, Inc. v. Club Car (Quebec) Import, Inc., 362 F.3d 775, 783 (11th Cir. 2004) (“Inadmissible hearsay generally cannot be considered on a motion for summary judgment.”); Macuba v. Deboer, 193 F.3d 1316, 1322 (11th Cir. 1999) (“The general rule is that inadmissible hearsay ‘cannot be considered on a motion for summary judgment.’”) (citation omitted). Because Mrs. Houston’s affidavit contains inadmissible hearsay, it is due to be stricken.

Respectfully submitted this 11th day of May, 2007.

s/ Monica G. Graveline

One of the Attorneys for Defendant
Army Fleet Support, LLC

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jimmy Jacobs(JAC051)
4137 Carmichael Road, Suite 100
Montgomery, Alabama 36106

s/ Monica G. Graveline
OF COUNSEL